

No. 25-6536

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TODD R.G. HILL,
Plaintiff-Appellant,

vs.

PEOPLES COLLEGE OF LAW – BOARD OF DIRECTORS, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
For the Central District of California
The Honorable Josephine L. Staton
District Court Case No. 2:23-cv-01298 JLS (BFM)

PEOPLES COLLEGE OF LAW APPELLEES’ ANSWERING BRIEF

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Table of Contents

I.	PRELIMINARY STATEMENT	1
II.	STATEMENT OF JURISDICTION	4
III.	STATEMENT OF THE ISSUES.....	5
IV.	STATEMENT OF THE CASE.....	6
	A. Factual Background	6
	B. Procedural Background.....	11
V.	SUMMARY OF THE ARGUMENT	19
VI.	ARGUMENT	20
	A. The Court Properly Adjudicated Plaintiff’s Various Requests for Judicial Notice and Did Not Abuse Its Discretion in Refusing to Take Judicial Notice of Disputed Facts.....	20
	B. The Court Correctly Dismissed Plaintiff’s RICO Claim.....	29
	1. Transcript Discrepancies.....	32
	2. Misrepresentations About PCL’s Status.....	36
	3. Plaintiff’s Tuition and PCL’s Billing Practices.....	37
	4. No Concrete Financial Harm Proximately Caused by the Alleged Predicate Acts.....	40
	C. The Court Properly Declined to Exercise Supplemental Jurisdiction Over Plaintiff’s State-Law Claims	43
	D. The Court Properly Denied Further Leave to Amend.....	49
	1. Repeated Failure to Cure Deficiencies	50

2.	Any Further Amendment Would Have Been Futile	54
3.	Prejudice to Defendants	58
4.	No Denial of Due Process	58
VII.	CONCLUSION.....	61
VIII.	CERTIFICATE OF COMPLIANCE.....	63
IX.	STATEMENT OF RELATED CASES.....	64
X.	CERTIFICATE OF SERVICE.....	65

Table of Authorities

Cases

<i>Alan Neuman Prods., Inc. v. Albright</i> , 862 F.2d 1388 (9th Cir. 1988).....	31, 37
<i>Allen v. City of Beverly Hills</i> , 911 F.2d 367 (9th Cir. 1990).....	53
<i>AmerisourceBergen Corp. v. Dialysist W., Inc.</i> , 465 F.3d 946 (9th Cir. 2006).....	49
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	36, 37
<i>Blas v. Talavera</i> , 318 F.2d 617 (9th Cir. 1963).....	28
<i>Canyon Cnty. v. Syngenta Seeds, Inc.</i> , 519 F.3d 969 (9th Cir. 2008).....	40, 41
<i>Cervantes v. Countrywide Home Loans, Inc.</i> , 656 F.3d 1034 (9th Cir. 2011).....	57
<i>Chaset v. Fleer/Skybox Int’l, LP</i> , 300 F.3d 1083 (9th Cir. 2002).....	41, 42
<i>Daniels-Hall v. Nat’l Educ. Ass’n</i> , 629 F.3d 992 (9th Cir. 2010).....	25
<i>Edwards v. Marin Park, Inc.</i> , 356 F.3d 1058 (9th Cir. 2004).....	31
<i>Eminence Cap., LLC v. Aspeon, Inc.</i> , 316 F.3d 1048 (9th Cir. 2003).....	58

<i>Entm't Research Grp., Inc. v. Genesis Creative Grp., Inc.</i> , 122 F.3d 1211 (9th Cir. 1997).....	30
<i>Fidelity Fin. Corp. v. Fed. Home Loan Bank of San Francisco</i> , 792 F.2d 1432 (9th Cir. 1986).....	53
<i>Foman v. Davis</i> , 371 U.S. 178 (1962)	49
<i>Grimmett v. Brown</i> , 75 F.3d 506 (9th Cir. 1996).....	31
<i>Grupo Dataflux v. Atlas Glob. Grp., L.P.</i> , 541 U.S. 567 (2004)	47
<i>Holder v. Holder</i> , 392 F.3d 1009 (9th Cir. 2004).....	60
<i>Ismail v. Cnty. of Orange</i> , 917 F. Supp. 2d 1060 (C.D. Cal.).....	44, 45
<i>Khoja v. Orexigen Therapeutics, Inc.</i> , 899 F.3d 988 (9th Cir. 2018).....	20, 21, 23, 24
<i>Kokkonen v. Guardian Life Ins. Co. of Am.</i> , 511 U.S. 375 (1994)	27
<i>Mir v. Fosburg</i> , 646 F.2d 342 (9th Cir. 1980).....	52, 53
<i>Mollan v. Torrance</i> , 9 Wheat. 537 (1824)	47
<i>N. Am. Watch Corp. v. Princess Ermine Jewels</i> , 786 F.2d 1447 (9th Cir. 1986).....	60
<i>Newman-Green, Inc. v. Alfonzo-Larrain</i> , 490 U.S. 826 (1989)	48, 57

<i>Ritter v. Hughes Aircraft Co.</i> , 58 F.3d 454 (9th Cir. 1995).....	25
<i>Rosenwald v. Kimberly-Clark Corp.</i> , 152 F.4th 1167 (9th Cir. 2025)	26, 27, 47
<i>Rothman v. Vedder Park Mgmt.</i> , 912 F.2d 315 (9th Cir. 1990).....	32, 39
<i>Salameh v. Tarsadia Hotel</i> , 726 F.3d 1124 (9th Cir. 2013).....	50, 53
<i>Sanford v. MemberWorks, Inc.</i> , 625 F.3d 550 (9th Cir. 2010).....	46
<i>Schreiber Distrib. Co. v. Serv-Well Furniture Co.</i> , 806 F.2d 1393 (9th Cir. 1986).....	36
<i>Sedima, S.P.R.L. v. Imrex Co.</i> , 473 U.S. 479 (1985)	31, 38, 39
<i>United States v. Amlani</i> , 111 F.3d 705 (9th Cir. 1997).....	33, 34
<i>United States v. Brugnara</i> , 856 F.3d 1198 (9th Cir. 2017).....	32
<i>United States v. Ramos</i> , 65 F.4th 427 (9th Cir. 2023)	60
<i>United States v. Tisor</i> , 96 F.3d 370 (9th Cir. 1996).....	30
<i>United States v. Williamson</i> , 439 F.3d 1125 (9th Cir. 2006).....	30
<i>Wren v. Sletten Const. Co.</i> , 654 F.2d 529 (9th Cir. 1981).....	44

Statutes

28 U.S.C. § 636.....	59
18 U.S.C. § 1341.....	32
18 U.S.C. § 1343.....	32
18 U.S.C. § 1951.....	32
18 U.S.C. § 1961.....	31, 38
18 U.S.C. § 1962.....	31
18 U.S.C. § 1964.....	31
28 U.S.C. § 1291.....	4
28 U.S.C. § 1331.....	4
28 U.S.C. § 1332.....	47
28 U.S.C. § 1367.....	2, 4, 19, 44, 45, 49
28 U.S.C. § 1653.....	48

Rules

FED. R. APP. P. 4.....	4
FED. R. APP. P. 28.....	30
FED. R. CIV. P. 9	31, 36, 38
FED. R. CIV. P. 10.....	33
FED. R. CIV. P. 15.....	49
FED. R. CIV. P. 61.....	28
FED. R. EVID. 201.....	20, 24, 27

I. PRELIMINARY STATEMENT

Plaintiff is a former student of Guild Law School, an unaccredited law school in Los Angeles, doing business as the Peoples College of Law (“PCL”). Plaintiff commenced this action against PCL and certain of PCL’s administrators, faculty, officers, and employees (collectively, the “PCL Defendants”), alleging violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and several state-law claims. Plaintiff also alleged constitutional claims against the State Bar of California and certain of its employees (collectively, the “State Bar Defendants”).

The district court ultimately dismissed the State Bar Defendants at the third amended complaint stage. It then dismissed the RICO claim against the PCL Defendants—the only remaining federal claim—at the fourth amended complaint stage. With no federal claims remaining, the court declined to exercise supplemental jurisdiction over Plaintiff’s state-law claims. It also denied Plaintiff further leave to amend.

Plaintiff has appealed, seeking a “limited” review of the following: (1) court’s rulings on various requests for judicial notice, (2) dismissal of the

Equal Protection claim against the State Bar Defendants, (3) clarification of the basis for the dismissal of the state-law claims, and (4) denial of leave to amend. *See* AOB at 1. Scattered throughout Plaintiff's brief are also limited references to the dismissal of his RICO claim against the PCL Defendants.

This Court should affirm. The record reflects that the court did not abuse its discretion in ruling on Plaintiff's numerous requests for judicial notice by taking judicial notice of the *existence* of certain documents but declining to take judicial notice of the *truth* of disputed facts therein. It is also clear from the record that once the only remaining federal claim was dismissed, the court properly declined to exercise supplemental jurisdiction over Plaintiff's state-law claims under 28 U.S.C. § 1367(c). The court also correctly concluded that diversity jurisdiction was lacking.

This Court should decline to reach the merits of Plaintiff's scattered arguments relating to the dismissal of his RICO claim as those arguments are undeveloped in the opening brief and not supported by authorities. In any event, the court properly dismissed the RICO claim because Plaintiff failed to plausibly plead any predicate act or that any act was done with the

specific intent to defraud pursuant to a *scheme to defraud*. Plaintiff has also failed to allege any concrete financial harm from any alleged violation.

Finally, the district court did not abuse its discretion in denying further leave to amend. Plaintiff had at least *seven* opportunities to plead a viable federal claim. Despite filing hundreds of pages of pleadings in conjunction with multiple requests for judicial notice and to supplement or amend, Plaintiff has consistently failed to cure prior defects identified by the court. Given Plaintiff's repeated failure to cure the defects, the court did not abuse its discretion in denying Plaintiff leave to amend to file his proposed Corrected Fifth Amended Complaint, particularly where it failed to fix any of the identified defects and, thus, any amendment would have been futile.

In sum, contrary to Plaintiff's arguments, he had a full opportunity to be heard and multiple attempts to state a viable federal cause of action. Both Defendants' motions to dismiss and the court's orders provided him with clear information about the defects and how they can be fixed. Each new pleading, however, failed to fix the prior defects and created new ones. For all these reasons, and the reasons set forth below, the Court should affirm.

II. STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331. The court initially had supplemental jurisdiction over Plaintiff's state-law claims pursuant to 28 U.S.C. § 1367(a). After the court dismissed all of Plaintiff's federal claims, the court properly declined to exercise supplemental jurisdiction over Plaintiff's state-law claims under 28 U.S.C. § 1367(c).

This Court has appellate jurisdiction under 28 U.S.C. § 1291. The district court entered judgment on August 20, 2025. 1 ER 10. The court denied Plaintiff's timely Rule 59 motion to alter or amend judgment on September 26, 2025. 1 ER 2–9. Plaintiff timely filed his notice of appeal on October 6, 2025. 6 ER 2–5; *see also* FED. R. APP. P. 4(a)(1)(A), (a)(4)(A)(4).

III. STATEMENT OF THE ISSUES

1. Did the court properly exercise its discretion by taking judicial notice of only the existence of the proffered documents and by declining to take judicial notice of irrelevant information and disputed facts?

2. Did Plaintiff waive and abandon any challenge to the court's dismissal of his federal RICO claim and, if not, did the court correctly dismiss Plaintiff's RICO claim for failure to state a cause of action?

3. Did the court correctly decline to exercise supplemental jurisdiction over Plaintiff's state-law claims where it has dismissed all federal claims and diversity jurisdiction was lacking?

4. Did the district court correctly deny leave to amend where Plaintiff has failed to plausibly plead a federal claim despite numerous opportunities and any further amendment would have been futile?

IV. STATEMENT OF THE CASE

A. Factual Background¹

In Fall 2019, Plaintiff enrolled at PCL, an unaccredited law school in Los Angeles. 3 ER 63 (¶ 43). Plaintiff alleges that PCL actively recruited students from underrepresented communities, targeting individuals from disadvantaged backgrounds. 3 ER 60 (¶ 36). Plaintiff acknowledges that PCL's instructors were unpaid volunteers. *Id.*

Plaintiff alleges that he maintained good academic standing at PCL, was elected to serve on the PCL's Community Board, and was one of only two PCL students from his class who passed the First-Year Law Student's Examination ("FYLSX"). 3 ER 60, 64, 67 (¶¶ 37, 49–50, 74).

According to Plaintiff, he encountered numerous problems at PCL. First, he received inaccurate transcripts in June 2020. 3 ER 60–61, 64, 67–68

¹ Unless otherwise noted, all factual background references are to Plaintiff's Fourth Amended Complaint (3 ER 54–234), which was the last operative pleading dismissed by the court. Defendant Spiro's Supplemental Excerpts of Record are cited as "___ SSER ___." The PCL Defendants' Supplemental Excerpts of Record are cited as "___ PCL-SER ___." All internal citations and quotation marks are omitted, and all emphasis is added.

(¶¶ 37, 51, 75). He alleges that his efforts to obtain accurate transcripts were obstructed by Defendants Gonzalez, Pena, Spiro, and Leonard. *Id.* He further alleges that the PCL Defendants intentionally manipulated students' transcripts to maintain the school's accreditation and to boost enrollment by preventing students from transferring to another school. 3 ER 62, 70–71, 77–79, 87 (¶¶ 40, 86, 107, 110, 112–113, 138–139). He also alleges that there was a racial component to the problem, in that PCL allegedly agreed to fix the transcript of a non-minority student (Ms. Popp) but did not do the same for Plaintiff, who is African-American. 3 ER 56, 75 (¶¶ 1, 98).²

Next, Plaintiff alleges that his election to the PCL Board was improperly challenged and rescinded as a result of a questionable review process by Defendants Pena and Gonzalez. 3 ER 65 (¶¶ 59–61).

Plaintiff further alleges that his access to classes was blocked in March 2022 following a tuition dispute. 3 ER 65–66 (¶¶ 62–63). Later that same

² The complaint, however, acknowledges that Spiro ultimately did *not* correct Ms. Popp's transcript as requested by her because he was advised by the State Bar that doing so would violate the State Bar's guidelines. *See* 3 ER 65, 127–128 (¶¶ 56–57, Ex. 1). On that basis, Spiro thereafter advised other instructors at PCL to *not* correct *any* of the transcripts. *See id.*

year, in July 2022, Defendant Spiro informed Plaintiff that PCL would not be able to provide him with the fourth-year courses necessary for Plaintiff to graduate. 3 ER 61, 66, 68 (¶¶ 37, 64, 78). Plaintiff applied for a “special circumstances” exception from the State Bar. 3 ER 66 (¶ 66). Plaintiff alleges that his application was denied because PCL submitted it late and because Spiro allegedly intentionally withheld Plaintiff’s medical disability records and other information related to PCL’s alleged misconduct. 3 ER (¶¶ 66–67).

Plaintiff also alleges that PCL financially defrauded him as well as other students and donors. 3 ER 74 (¶ 95). For example, Plaintiff alleges that on January 9, 2020, he entered into a work agreement with Spiro pursuant to which Plaintiff would work at PCL for a limited time and a maximum pay of \$600 and Plaintiff’s earnings would be credited to his outstanding tuition amount. 3 ER 68–70 (¶¶ 76, 84). According to Plaintiff, that agreement was not honored, resulting in him being overcharged \$2,400 for tuition. 3 ER 68, 70 (¶¶ 77, 84). Plaintiff also alleges that Bouffard improperly demanded tuition payments despite payment agreements between Plaintiff and PCL, and in violation of State Bar policies. 3 ER 61–62 (¶ 39). In another example,

Plaintiff alleges Spiro and Gonzalez organized a fundraiser at PCL with the intent to use all proceeds for student needs. 3 ER 64 (¶ 52). However, those funds were instead allegedly diverted for other purposes. *Id.*

With respect to his RICO cause of action, Plaintiff alleged that from at least May 2019 to May 2024, Defendants Sariana, Bouffard, Pena, Spiro, Gonzalez, Torred, Aramayo, Zuniga, Viramontes, and/or Sanchez continuously engaged in the following acts by use of the mail or a wire: (1) dissemination of false information about PCL's bar passage rates, compliance status, and instructional offerings; (2) extortion through threats to withhold academic credentials unless additional payments were made; (3) awarding improper academic credits to discourage transfer to other institutions; (4) failure to recuse from administrative decisions involving a conflict of interest; (5) false assurances and withholding accurate academic records; (6) discrimination against students based on protected characteristics; and (7) distribution of false academic transcripts. 3 ER 76, 82, 86–87 (¶¶ 102, 125–126, 137). According to Plaintiff, PCL's failure to provide the necessary academic resources, maintain accurate records, and ensure

compliance with educational standards disproportionately harmed African-American students. 3 ER 62, 70, 88 (§§ 41, 85, 141).

Plaintiff alleges that these administrative failures were part of PCL's larger mode of operation. 3 ER 70–71 (§§ 86–87). According to Plaintiff, since at least 2017, and unbeknownst to him, PCL has engaged in a pattern of non-compliance with State Bar regulations related to record-keeping, grading, attendance policies, and scholastic standards. 3 ER 60, 62 (§§ 35, 42). Plaintiff alleges that these deficiencies were documented by the Committee of Bar Examiners during the January 2020 inspection. 3 ER 60, 63–64 (§§ 35, 47–48). Plaintiff alleges that PCL continued to operate despite these documented grievances and inspection reports. 3 ER 61 (§ 39).

Plaintiff alleges that as a result of PCL's noncompliance with the State Bar's guidelines, the State Bar issued a formal Notice of Noncompliance to PCL on July 20, 2022, and placed PCL on probation in December 2022. 3 ER 66–67 (§§ 65, 68). The State Bar revoked PCL's registration and terminated its degree-granting authority in May 2024. 3 ER 67–68 (§§ 71, 79).

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Separately, the Third Amended Complaint previously alleged that the State Bar was complicit in PCL's actions. *See* 1 PCL-SER 118–121 (¶¶ 58–84); *see also* 3 ER 68–69 (¶¶ 80–83). The State Bar Defendants allegedly knew or should have known of PLC's noncompliance with the State Bar's guidelines and the disparate education outcomes at PCL but failed to take any remedial action. 1 PCL-SER 117–118, 122–124 (¶¶ 51, 53, 58–61, 98–102, 105). The State Bar Defendants' failure to take remedial action was allegedly driven by the State Bar's non-interference policy, under which the State Bar declines to intervene in disputes between students and their law schools. 1 PCL-SER 120 (¶¶ 79–80). According to Plaintiff, the State Bar Defendants' failure to act caused significant delays in his legal education and was emblematic of the disparate impact the policy has on African-American students. 1 PCL-SER 118–120, 123, 125 (¶¶ 62, 73–76, 100, 102, 109).

B. Procedural Background

Plaintiff commenced this action on February 20, 2023, with the filing of a 402-page complaint, followed by the filing of hundreds of additional pages of exhibits. *See* 6 ER 43–44 (Dkt. Nos. 1, 8–25). By order dated April

5, 2023, the court *sua sponte* dismissed Plaintiff's complaint under Rule 8, observing that it was "rambling, replete with facts of dubious relevance, and ... insufficiently clear as to what each of the Defendants in this action allegedly did wrong." 2 PCL-SER 567 (Dkt. No. 37).

Plaintiff filed his First Amended Complaint ("FAC") on April 18, 2023. *See* 6 ER 45 (Dkt. No. 38). Plaintiff followed that with the filing of a motion to supplement the FAC on May 5, 2023. *See* 6 ER 46 (Dkt. No. 40). On June 7, 2023, the court denied leave to supplement and dismissed the FAC with leave to amend under Rule 8, observing that although it was "significantly shorter than the original Complaint," it was "still extremely long and prolix." 2 PCL-SER 556 (Dkt. No. 45). In dismissing the FAC, the court once again found it to be "rambling, replete with statements of dubious significance, and very difficult to follow." *Id.*

Thereafter, Plaintiff failed to timely file his Second Amended Complaint ("SAC"), leading the court to dismiss the action for failure to prosecute on July 27, 2023. *See* 6 ER 47 (Dkt. No. 47). Plaintiff moved for relief from judgment and for leave to file SAC. *See id.* (Dkt. No. 48). The

court set aside the dismissal and granted leave to file the SAC. *See id.* (Dkt. No. 54). Plaintiff filed the SAC on September 20, 2023. *See id.* (Dkt. No. 55).

The SAC was 121 pages long with additional 70 pages of exhibits and asserted 16 causes of action against more than 60 defendants. *See* 2 PCL-SER 313–314 (Dkt. No. 132). Seven motions to dismiss were filed. *See* 2 PCL-SER 314. On April 23, 2024, the Magistrate Judge issued a report and recommendation (“SAC R&R”), recommending the dismissal of some causes of action with prejudice and other causes of action with leave to amend. *See* 2 PCL-SER 312–313. Among other things, the Magistrate Judge concluded that the SAC once again violated Rule 8 because it was “excessively long and often confusing” and “continue[d] to exhibit the landmarks of a ‘shotgun pleading.’” 2 PCL-SER 323. The Magistrate Judge also discussed the merits of Plaintiff’s various claims, supplying him with information as to how his claims were deficient and how they can be streamlined and cured to comply with Rules 8 and 12. *See* 2 PCL-SER 310, 323–338.

The SAC R&R also addressed Plaintiff’s two requests for judicial notice at Dkt. Nos. 102 and 106, through which Plaintiff sought judicial notice of (1)

two exhibits from the State Bar regarding to PCL's alleged non-compliance; and (2) certain legal authority. 2 PCL-SER 315. With regard to Plaintiff's first request (Dkt. No. 102), the Magistrate Judge recommended granting judicial notice of the existence of the State Bar documents but denying it with regard to the disputed factual findings in those documents as well as Plaintiff's interpretation of those facts. 2 PCL-SER 322.

By order dated August 5, 2024, the court accepted the SAC R&R and dismissed Plaintiff's SAC with leave to amend as to certain claims. 2 PCL-SER 309–311 (Dkt. No. 145). The court also granted Plaintiff's first request for judicial notice (Dkt. No. 102) but only as to the existence of the State Bar documents submitted by Plaintiff and not the facts within those documents. 2 PCL-SER 310. The court denied Plaintiff's second request for judicial notice (Dkt. No. 106) pertaining to certain legal authorities. *Id.*

Plaintiff filed his Third Amended Complaint ("TAC") on August 21, 2024. 1 PCL-SER 111–298 (Dkt. No. 148). The TAC totaled 188 pages with exhibits. *Id.* On September 6, 2024, Plaintiff filed a motion to amend the TAC. 2 PCL-SER 304–308 (Dkt. No. 163); *see also* 5 ER 41–137 (Dkt. No. 164).

Defendants moved to dismiss. *See* 6 ER 66–68, 70 (Dkt. Nos. 154, 165, 172, 186). Defendants also opposed Plaintiff’s motion to amend the TAC. *See* 6 ER 69 (Dkt. Nos. 177, 178, 179). Plaintiff also filed a request for judicial notice and a motion to supplement the record with regard to certain meet-and-confer correspondence and State Bar documents. *See* 4 ER 2–177.

On February 12, 2025, the Magistrate Judge issued a report and recommendation as to the TAC (“TAC R&R”). 1 ER 43–75. The TAC R&R recommended (1) dismissing without leave to amend all claims against the State Bar Defendants, (2) dismissing with leave to amend the RICO claim against the PCL Defendants, (3) dismissing Plaintiff’s Title IX claim without leave to amend, and (4) dismissing without prejudice the state-law claims against the PCL Defendants. 1 ER 73–74. It recommended denying Plaintiff’s motion to amend the TAC. 1 ER 70–71. Finally, it also recommended granting in part Plaintiff’s request for judicial notice (Dkt. No. 197) and motion to supplement the record (Dkt. No. 199). 1 ER 54.

Plaintiff filed objections to the TAC R&R. He also filed additional requests for judicial notice and to supplement the record. *See* 6 ER 72–73

(Dkt. Nos. 222, 224, 226, 227, 228). The Magistrate Judge ruled on Plaintiff's requests on March 5, 2025, taking judicial notice of the existence of the State Bar's PowerPoint presentation (Dkt. No. 222) and Defendants Spiro's and Pena's state-court declarations (Dkt. No. 226) but denying judicial notice of disputed facts therein. 2 PCL-SER 300–303 (Dkt. No. 229).

On March 27, 2025, the court adopted the TAC R&R. 1 ER 40–42. Plaintiff sought reconsideration. On April 25, 2025, the court denied the motion for reconsideration in a detailed order. 1 PCL-SER 107–110 (Dkt. No. 277); *see also* 1 ER 36–39 (duplicative order dated May 27, 2025).

Plaintiff filed his Fourth Amended Complaint on March 31, 2025, and a corrected Fourth Amended Complaint (“4AC”) on April 1, 2025. *See* 6 ER 72 (Dkt. Nos. 255, 257). The 4AC was 181 pages with exhibits. 3 ER 54–234. Defendants moved to dismiss. *See* 6 ER 78 (Dkt. Nos. 263, 270).

While the motions to dismiss were pending, Plaintiff filed a proposed Fifth Amended Complaint (“5AC”) on May 19, 2025. *See* 6 ER 82 (Dkt. No. 310). Plaintiff then immediately filed a proposed Corrected Fifth Amended Complaint (“C5AC”) on May 22, 2025. *See* 2 ER 51–236 (Dkt. No. 313). On

May 23, 2025, in response to the court's order (*see* 6 ER 82 (Dkt. No. 311)), Plaintiff filed a red-lined version of the C5AC, comparing it to Plaintiff's 4AC. *See* 1 PCL-SER 12–16, 17–106 (Dkt. Nos. 317, 318). Defendants opposed the filing of Plaintiff's C5AC. *See* 6 ER 83 (Dkt. Nos. 319, 321).

On June 13, 2025, Plaintiff filed a formal motion to amend. 2 ER 37–46. Defendants opposed. *See* 6 ER 84–85 (Dkt. Nos. 333, 337); *see also* 2 ER 26–36. Plaintiff replied. *See* 6 ER 85 (Dkt. Nos. 338, 339); *see also* 2 ER 1–25.

On July 22, 2025, the Magistrate Judge issued a report and recommendation as to Plaintiff's 4AC ("4AC R&R"). 1 ER 14–35. The 4AC R&R recommended dismissing with prejudice Plaintiff's RICO claim against the PCL Defendants based on Plaintiff's failure to plausibly allege any conduct that fits the definition of racketeering activity as well as proximate causation. 1 ER 24–31. It recommended dismissing Plaintiff's supplemental state-law claims without prejudice to Plaintiff bringing them in state court. 1 ER 31. The Magistrate Judge also rejected Plaintiff's argument that the court had diversity jurisdiction over the action, given that complete diversity was lacking at the commencement of the action. 1 ER 31 n.8.

The 4AC R&R also recommended denying further leave to amend in light of Plaintiff's repeated failure to state a cause of action and futility of proposed amendments in the C5AC. 1 ER 32–34. Finally, the 4AC R&R recommended denying the parties' multiple requests for judicial notice on the ground that the documents were either not relevant or concerned issues of disputed fact not appropriate for judicial notice. 1 ER 21–23.

On August 20, 2025, the court adopted the 4AC R&R with one modification—dismissing Plaintiff's state-law claims without prejudice to being refiled in state court. 1 ER 11–13.³

Judgment was entered on August 20, 2025. 1 ER 10. Plaintiff filed a motion to amend or alter judgment under Rule 59. The court denied the Rule 59 motion in a detailed order on September 26, 2025. 1 ER 2–9.

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³ Although the 4AC R&R recommended dismissal of the state-law claims “without prejudice” in the body of the report (*see* 1 ER 31), it inadvertently recommended that the entire 4AC be dismissed “with prejudice” in the recommendation part (*see* 1 ER 34). The court's order adopting the 4AC R&R corrected this oversight by expressly stating that the state-law claims were being dismissed “without prejudice.” *See* 1 ER 13.

V. SUMMARY OF THE ARGUMENT

The court did not abuse its discretion in only taking judicial notice of the existence of proffered documents and in declining to take judicial notice of the truth of the disputed facts contained therein.

This Court should decline to reach the merits of Plaintiff's RICO claim as Plaintiff has abandoned this argument on appeal. In any event, the court correctly dismissed Plaintiff's RICO claim because the 4AC failed to plausibly allege any predicate act or that any act was taken with specific intent to defraud pursuant to a scheme to defraud. Plaintiff has also failed to plausibly plead any concrete financial harm from any violation.

Having dismissed all of Plaintiff's federal claims, the court properly declined to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c) over Plaintiff's state-law claims. The court also properly concluded that diversity jurisdiction was lacking at the commencement of the action.

Finally, the court did not abuse its discretion in denying further leave to amend where Plaintiff has repeatedly failed to cure defects in his pleadings and any further amendment would have been futile.

VI. ARGUMENT

A. The Court Properly Adjudicated Plaintiff's Various Requests for Judicial Notice and Did Not Abuse Its Discretion in Refusing to Take Judicial Notice of Disputed Facts

Plaintiff's first argument on appeal is that the district court failed to properly rule on his numerous requests for judicial notice, failed to conduct an "exhibit-by-exhibit" review, and failed to specify what adjudicative facts were "accepted" from the proffered documents. AOB 1, 3, 12–13. According to Plaintiff, this course of conduct "left unclear which documents and factual propositions underlay the Rule 12(b)(6) dismissal." AOB 1.

This Court reviews for abuse of discretion the district court's decision to take or deny judicial notice. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is "not subject to reasonable dispute." FED. R. EVID. 201(b). A fact is "not subject to reasonable dispute" if it is "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(1)–(2). Notably, although the existence of a public record may qualify as an

“adjudicative fact” of which the court may take judicial notice, the court *cannot* take judicial notice of disputed facts within such a document. *See Khoja*, 899 F.3d at 999 (“Just because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth.”).

Here, the district court did not abuse its discretion in ruling on Plaintiff’s numerous requests for judicial notice. To begin with, the court addressed each of Plaintiff’s requests, thus providing Plaintiff with the “exhibit-by-exhibit” analysis that he argues is required. Specifically:

- The court granted in part Plaintiff’s request for judicial notice at **Dkt. No. 102** (seeking judicial notice of State Bar’s report regarding PCL’s alleged noncompliance), taking judicial notice of the *existence* of the report and the fact that the State Bar made the findings in the report but declining to take judicial notice of the *truth* of the disputed facts contained therein and Plaintiff’s interpretation of those facts. *See* 2 PCL-SER 322 (Dkt. No. 132) (SAC R&R); 2 PCL-SER 310 (Dkt. No. 145) (order adopting R&R).
- The court granted in part Plaintiff’s request for judicial notice at **Dkt. No. 197** and motion to supplement the record at **Dkt. No. 199**, taking judicial notice of the *existence* of the e-mail exchanges submitted by Plaintiff but refusing to take judicial notice of the *truth* of the assertions made by each party. *See* 1 ER 54 (TAC R&R); 1 ER 41 (¶¶ 5–6) (order adopting R&R).

- The court declined to take judicial notice of Plaintiff's requests for judicial notice at Dkt. Nos. 276, 290, and 301 (as well as competing requests submitted by Defendant Spiro) because a number of them (*i.e.*, exhibits reflecting Spiro's status at PCL and the State Bar's guidelines) were not relevant to its order, while others were being offered for the *truth* of the facts included (*i.e.*, exhibits purporting to bear on Spiro's knowledge or intent). *See* 1 ER 22–23 (4AC R&R); 1 ER 12 (§ 6) (order adopting R&R).

As the above demonstrates, the court *did* conduct an exhibit-by-exhibit review of the requests as urged by Plaintiff, granting some of them (for the *existence* of the documents) and denying others (based on lack of relevance and where the parties sought to judicially notice disputed facts). Plaintiff's opening brief utterly fails to engage with this undisputed fact or to demonstrate what specific exhibit was not judicially noticed (but should have been) and why any such failure constituted an abuse of discretion.

Instead, Plaintiff attempts to fault the court for allegedly not making clear which facts were accepted for purposes of the Rule 12(b)(6) motions. This argument lacks merit, however, as the court made it clear that it will *not* be judicially noticing *any* of the disputed facts within the proffered documents (for *all* parties), even if it would judicially notice the existence of those documents. *See* 2 PCL-SER 322 (Dkt. No. 132) (SAC R&R); 2 PCL-SER

310 (Dkt. No. 145) (order adopting SAC R&R); 1 ER 54 (TAC R&R); 1 ER 41 (¶¶ 5–6) (order adopting TAC R&R); 1 ER 22–23 (4AC R&R); 1 ER 12 (¶ 6) (order adopting 4AC R&R).

Similarly inapt is Plaintiff’s suggestion of “inconsistent” treatment. The court refused to take judicial notice of disputed facts in *both* parties’ proffered documents. *See, e.g.*, 1 ER 23 (declining to take judicial notice “to the extent Spiro offers exhibits intended to explain actions he took or the state of mind with which those actions were taken”).

Relying on *Khoja*, Plaintiff argues the court was required to “identify what it is noticing and why, so that appellate review is possible.” *See* AOB at 20–21. Plaintiff’s reliance is misplaced. In *Khoja*, this Court faulted the district court to the extent it *took* judicial notice of disputed facts to contradict the well-pleaded allegations in plaintiff’s complaint. *See* 899 F.3d at 1000–01. That problem is *not* present here, as the court expressly *declined* to take judicial notice of any of the disputed facts (proffered by Plaintiff and Defendants). As such, the appellate record is clear.

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Shifting gears, Plaintiff also seems to suggest that the district court should have judicially noticed the disputed facts contained in the State Bar documents because the documents are part of the public record. *See* AOB at 20. This Court in *Khoja* rejected this precise argument, holding that the court cannot take judicial notice of disputed facts within documents *even if* the documents themselves are part of the public record and, thus, their *existence* cannot reasonably be disputed. *See* 899 F.3d at 999 (holding that even though “a court may take judicial notice of matters of public record,” it “cannot take judicial notice of disputed facts contained in such public records”).

Plaintiff’s suggestion that the facts are not “disputed” if they constitute “official agency findings” fails for the same reason. *See* AOB at 21. The mere fact that an agency (here, the State Bar) made a finding does *not* necessarily make that finding “not subject to reasonable dispute” under Rule 201, particularly where it *is* disputed by the adverse party. Here, as to Plaintiff’s Dkt. No. 102, the State Bar’s own report documented that PCL *disputed* many of the State Bar’s conclusions. *See* 2 PCL-SER 399–428 (Dkt. No. 102) (PCL’s response to the State Bar’s inspection report). Given the foregoing,

the court properly took judicial notice of the *existence* of the State Bar’s report but not the truth of the disputed facts contained therein or Plaintiff’s interpretation of those facts. *See* 2 PCL-SER 322.⁴

Nor is it accurate to suggest, as Plaintiff does, that by refusing to take judicial notice of the disputed facts in exhibits, the court somehow ignored the fact that there were longstanding regulatory violations at PCL or that the State Bar documented those violations and, ultimately, revoked PCL’s charter. *See* AOB at 21–22 & n.3. Notably, these allegations were also pleaded in Plaintiff’s complaints. *See, e.g.*, 3 ER 60, 63–64, 66–68 (¶¶ 35, 47–48, 65, 68, 71, 79) (allegations in the 4AC relating to the State Bar’s January 2020 inspection and documentation of PCL’s noncompliance, July 2022 notice of noncompliance, the placement of PCL on probation in December

⁴ Plaintiff’s cited cases are not to the contrary. In *Daniels-Hall v. National Education Association*, the Court took judicial notice of the list of approved vendors displayed on the school districts’ websites because “neither party dispute[d] the authenticity of the web sites *or the accuracy of the information displayed therein.*” *See* 629 F.3d 992, 999–1000 (9th Cir. 2010). Similarly, in *Ritter v. Hughes Aircraft Co.*, the Court took judicial notice of widespread layoffs because that fact “would be generally known in Southern California” and, thus, “would be capable of sufficiently accurate and ready determination.” *See* 58 F.3d 454, 458–59 (9th Cir. 1995).

2022, and the revocation of PCL's registration in May 2024). And the court credited these allegations as true for purposes of the motions to dismiss. As the court observed in denying Plaintiff's Rule 59 motion:

Nowhere in the Report and Recommendation are Plaintiff's allegations questioned or otherwise taken as false. What is questioned are the inferences Plaintiff would have the Court draw from those facts. As observed in the Report and Recommendation: "Plaintiff's allegations are merely consistent with Defendants' liability, they 'stop short of the line between possibility and plausibility of entitlement to relief.'"

1 ER 6.

Simply put, contrary to Plaintiff's assertions on appeal, the court *did* consider all of his voluminous allegations and concluded that they were still not sufficient to plausibly state a federal cause of action.

Finally, Plaintiff's reliance on this Court's recent decision in *Rosenwald v. Kimberly-Clark Corp.*, 152 F.4th 1167 (9th Cir. 2025), is misplaced. In *Rosenwald*, the Court addressed whether the plaintiffs adequately pleaded *subject-matter jurisdiction* in a case where both parties argued that the court had jurisdiction. *See id.* at 1173–74. The Court held that "a district court may *not* establish diversity of citizenship purely by judicial notice." *Id.* at 1174.

Crucially, the Court refused to rely on judicial notice to establish jurisdiction because subject-matter jurisdiction is essential for the Court to adjudicate the merits. *See id.* at 1182 (“the jurisdiction of a federal court must affirmatively and distinctly appear and cannot be helped by presumptions or by argumentative inferences drawn from the pleadings”).

The holding in *Rosenwald* is premised on the well-settled principle that “[f]ederal courts are courts of limited jurisdiction.” *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As a result, “[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Id.*

Rosenwald is of no help to Plaintiff because the issues with judicial notice in this appeal had nothing to do with the court’s subject-matter jurisdiction. Rather, Plaintiff was asking the court to judicially notice disputed facts in order to bolster *the merits allegations* of his complaints. The court correctly refused to judicially notice the *truth* of the disputed facts because Plaintiff failed to meet his burden of demonstrating that they were “not subject to reasonable dispute.” *See* FED. R. EVID. 201(b).

* * *

In sum, the record establishes beyond doubt that the court thoroughly examined Plaintiff's numerous requests for judicial notice and motions to supplement the record, including at the SAC, TAC, and 4AC stages. Where appropriate, the court granted Plaintiff's requests in part by taking judicial notice of the existence of the exhibits. And the court properly declined to take judicial notice of disputed facts, facts that were not relevant to the court's orders, as well as legal authorities and argument. On this record, Plaintiff has not come close to showing that the court abused its discretion.

More importantly, Plaintiff does not and cannot demonstrate that he was prejudiced by any specific failure to take judicial notice. *See Blas v. Talavera*, 318 F.2d 617, 619 (9th Cir. 1963) ("Error in failing to take judicial notice of a fact is not ground for reversal unless it is shown that the appellant is prejudiced by the error."); FED. R. CIV. P. 61 ("harmless error" standard). Plaintiff fails to identify any specific exhibit or adjudicative fact that, had it been judicially noticed, would have nudged Plaintiff's claims beyond the plausibility threshold. Indeed, Plaintiff does not even discuss prejudice in

his brief or why any failure to judicially notice was not harmless. For all these reasons, the Court should affirm the district court's thorough treatment of Plaintiff's requests for judicial notice.

B. The Court Correctly Dismissed Plaintiff's RICO Claim

Plaintiff purports to style his opening brief as raising only "limited" questions pertaining to (1) judicial notice, (2) leave to amend, (3) TAC-stage Equal Protection and immunity rulings, and (4) jurisdictional basis for dismissing his state-law claims. *See* AOB at 1. However, sprinkled throughout the opening brief are disjointed and poorly-developed references pertaining to the dismissal of Plaintiff's RICO claim. *See, e.g.*, AOB at 1–2 (one sentence arguing that the court "summarily rejected the RICO claim without a reasoned application" of several authorities); *id.* at 25 (two paragraphs referencing the court's "RICO analysis" included under the argument section pertaining to denial of judicial notice); *id.* at 53–54 (one paragraph discussing the "residual RICO claim" included under the argument section pertaining to Plaintiff's C5AC and prejudice).

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The Court should decline to reach the merits of Plaintiff's RICO claim as it is not supported by substantive and cogent argument or pertinent authorities. *See, e.g., Entm't Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997) ("We review only issues which are argued specifically and distinctly in a party's opening brief. We will not manufacture arguments for an appellant, *and a bare assertion does not preserve a claim*, particularly when, as here, a host of other issues are presented for review."); *United States v. Williamson*, 439 F.3d 1125, 1137–38 (9th Cir. 2006) (issues raised in a brief but not supported by "specific, cogent argument[]" are deemed abandoned); *United States v. Tisor*, 96 F.3d 370, 376 (9th Cir. 1996) (issues waived by failure to present argument or pertinent authority to support contentions); *see also* FED. R. APP. P. 28(a)(8)(A).

In any event, even if the Court were to reach the merits of the RICO claim, the record reveals that it was properly dismissed. The elements of a civil RICO claim are: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as "predicate acts") (5) causing injury to the plaintiff's "business or property." *See Grimmer v. Brown*, 75 F.3d 506, 510

(9th Cir. 1996); *see also* 18 U.S.C. §§ 1962(c), 1964(c); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). Where, as here, Plaintiff premises his RICO claim on allegations of mail and wire fraud, the complaint must comply with Rule 9(b). *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065–66 (9th Cir. 2004) (“Rule 9(b)’s requirement that in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity applies to civil RICO fraud claims.”); *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) (the complaint failed to state a RICO claim where the predicate acts of mail and wire fraud were “entirely general”).

In this case, the court correctly concluded that despite multiple attempts, Plaintiff failed to plausibly allege the predicate acts of mail and wire fraud with the particularity required under Rule 9(b). *See* 1 ER 24–31.

The court dismissed Plaintiff’s RICO claim primarily based on failure to plead conduct that would fit any definition of a racketeering act. 1 ER 25. The predicate acts that may form the basis for a RICO claim are set forth in 18 U.S.C. § 1961(1). As relevant to Plaintiff’s allegations, they include: (1) mail fraud, (2) wire fraud, and (3) extortion. The elements of mail and wire

fraud are essentially the same: Plaintiff must show (1) a scheme to defraud, (2) the use of either mail or wire to further the scheme, and (3) specific intent to defraud. *See United States v. Brugnara*, 856 F.3d 1198, 1207 (9th Cir. 2017); *see also* 18 U.S.C. §§ 1341, 1343. “Extortion” is defined as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear.” *Rothman v. Vedder Park Mgmt.*, 912 F.2d 315, 317 (9th Cir. 1990) (quoting 18 U.S.C. § 1951(b)(2)).

As the court below observed, Plaintiff’s predicate-act allegations can be divided into three separate categories. *See* 1 ER 25; *see also* 3 ER 72, 77 (¶¶ 90, 107). Each category is analyzed in turn below to show why the court properly concluded that they fail to plausibly allege any predicate act (*i.e.*, mail fraud, wire fraud, or extortion) actionable under RICO.

1. Transcript Discrepancies

Plaintiff alleges that certain of the PCL Defendants violated RICO when they (1) disseminated falsified transcripts, (2) intentionally manipulated academic transcripts and misrepresented instructional credit hours, (3) obstructed Plaintiff’s ability to transfer through the manipulation

of transcript records, and (4) expressed an intent to correct another student's transcript (Ms. Popp) while refusing to correct Plaintiff's transcript. *See* 3 ER 72, 75, 77, 78, 79, 81, 88 (¶¶ 90(a), 90(c), 98, 107, 110, 112, 119, 141).

As the court observed, even accepting these allegations as true, they do not plausibly allege a *scheme to defraud* that was carried out with *specific intent to defraud*, both of which are required elements. *See* 1 ER 25–26. On the contrary, “[a] person who acts ... on a belief or an opinion honestly held is *not* punishable under [the wire fraud] statute merely because the belief or opinion turns out to be inaccurate, incorrect, or wrong.” *United States v. Amlani*, 111 F.3d 705, 717 (9th Cir. 1997). “An honest mistake in judgment or an error in management does not rise to the level of intent to defraud.” *Id.*

Here, the court correctly held that Plaintiff failed to plausibly allege that Defendants provided him with inaccurate transcripts *with intent to defraud*. Indeed, Plaintiff's own exhibits that were attached to the 4AC (and, thus, became part of the complaint for all purposes, *see* FED. R. CIV. P. 10(c)) suggest the opposite. One is an April 2022 e-mail exchange between PCL administrators and the State Bar, in which PCL administrators attempted to

explain how they had decided to award credits and the State Bar explained why it believed PCL's accounting was faulty. *See* 3 ER 226–229 (Ex. 9). As the court observed, this exchange “strongly suggests that PCL did not understand how to properly award credits but does not give rise to an inference that anyone intentionally falsified records *with intent to defraud*.” *See* 1 ER 26. In other words, Plaintiff's complaint, at most, alleges that PCL administrators were awarding credits under an honestly-held belief that turned out to be inaccurate and incorrect. Such “error in management does *not* rise to the level of intent to defraud” necessary to plausibly allege the predicate act of mail or wire fraud. *See Amlani*, 111 F.3d at 717.

In another e-mail attached to the 4AC, Defendant Spiro communicates with the State Bar about correcting Ms. Popp's transcript and is instructed by the State Bar to *not* correct the transcript as doing so would amount to an “improper alteration” of the transcript. *See* 3 ER 126–127 (Ex. 1). Spiro then e-mails other PCL administrators, including Plaintiff, indicating that he will *not* be correcting Ms. Popp's transcript and stating that in his opinion “nobody else on behalf of PCL should do so.” *See* 3 ER 128 (Ex. 1). As the

court observed, these and similar instances relied upon by Plaintiff may “highlight the extent of PCL’s record-keeping incompetence” but they “hardly give rise to an inference of malevolence.” *See* 1 ER 26–27.

Plaintiff also alleges that his efforts to obtain accurate transcripts were “obstructed” by certain of the PCL Defendants. *See, e.g.,* 3 ER 61, 67–68 (¶¶ 37, 75). However, these allegations are conclusory and do not state the required who, what, when, and how the “obstruction” efforts took place. In any event, as Plaintiff’s own exhibits demonstrate, the State Bar instructed Defendant Spiro *not* to correct any of the transcripts *ex post facto* as doing so would amount to “improper alteration.” *See* 3 ER 127 (Ex. 1). Thus, once again, Plaintiff’s own exhibits cast doubt on whether any alleged “obstruction” was made with the necessary intent to defraud.

In sum, as the court below appropriately concluded, even accepting all of Plaintiff’s allegations regarding transcript deficiencies, they do not plausibly allege that the PCL Defendants provided inaccurate transcripts with the intent to defraud or as part of a plausible scheme to defraud and, thus, “stop[] short of the line between possibility and plausibility of

entitlement to relief.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

2. Misrepresentations About PCL’s Status

Plaintiff generally alleges that between May 2019 and March 2024, certain of the PCL Defendants “systematically” disseminated false statements about PCL’s bar passage rates, accreditation status, and financial solvency. 3 ER 72, 76, 82, 86 (¶¶ 90(b), 102, 126, 137(d)). As the court below observed, “[s]imilar allegations are sprinkled throughout the Fourth Amended Complaint but are *devoid of any details*: it is unclear *when* the communications occurred, *what* misrepresentations were made in individual communications, *who* made the communications, or what the *intent* was behind any of those communications.” 1 ER 29. The court correctly concluded that such general allegations fail to comply with Rule 9(b). *See, e.g., Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (“We have interpreted Rule 9(b) to mean that the pleader must state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation.”).

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In addition, as the court cogently observed, without more information, it is impossible for the Court “to evaluate whether the miscommunications were the product of an intent to deceive, rather than accidental or the result of incompetence, and whether any of those statements conveyed to donors and students injured Plaintiff.” 1 ER 29. Simply put, once again, the 4AC’s allegations are “merely consistent with” liability and, thus, “stop[] short of the line between possibility and plausibility of entitlement to relief.” *See Iqbal*, 556 U.S. at 678; *see also Alan Neuman*, 862 F.2d at 1392 (concluding that the RICO claim was not properly pleaded where the allegations of mail and wire fraud were “entirely general”).

3. Plaintiff’s Tuition and PCL’s Billing Practices

Plaintiff also alleges that he was overcharged for tuition in 2022 when PCL failed to credit him \$2,400 that he allegedly earned working for PCL. *See* 3 ER 68, 70 (¶¶ 77, 84). The 4AC, however, provides scant details about the work arrangement between Plaintiff and Spiro or any details as to why the failure to credit Plaintiff’s account pursuant to the arrangement agreed upon *in 2020* turned into a tuition dispute *in 2022*. *See* 1 ER 30.

As the court observed, the 4AC fails to provide the necessary particularity required under Rule 9(b) with regard to these allegations. *See* 1 ER 30. More importantly, Plaintiff has not alleged that this tuition dispute “was somehow part of a *pattern* of deceptive practices” (*see* 1 ER 30), which is one of the elements of a RICO cause of action.

Although 18 U.S.C. § 1961(5) requires “at least two acts of racketeering activity” in order to establish a “pattern,” two acts “may not be sufficient.” *Sedima*, 473 U.S. at 496 n.14. In *Sedima*, the Supreme Court reviewed RICO’s legislative history and concluded that “two isolated acts of racketeering activity do not constitute a pattern.” *Id.* The Supreme Court also observed that “[t]he target of RICO is ... not sporadic activity” but, instead, “the threat of *continuing* activity.” *Id.* “It is this factor of continuity plus relationship which combines to produce a pattern.” *Id.*

Here, as to the alleged tuition dispute, the 4AC (at most) only alleges two isolated instances: (1) Spiro’s alleged failure to honor the work arrangement between Plaintiff and PCL (*see* 3 ER 68, 70 (¶¶ 77, 84)); and (2) Bouffard’s alleged improper demand of tuition payments despite the work

arrangement (*see* 3 ER 61–62 (¶ 39)). These *isolated* and *sporadic* acts do not constitute a “pattern” of racketeering activity. *See Sedima*, 473 U.S. 479, 496 n.14. Nor does the 4AC plausibly allege any “threat of *continuing* activity,” as is required to state a claim under RICO. *See id.*

Plaintiff’s allegations of deceptive billing practices do not fare any better. Plaintiff alleges that PCL continued to solicit tuition payments from him in 2022 despite the fact that it failed to provide him with the required fourth-year courses necessary to graduate. *See* 3 ER 61 (¶ 37). As the court correctly observed, these allegations do not plausibly state a fraud claim because the complaint concedes that Plaintiff *was* informed about the PCL’s inability to provide him with the fourth-year courses in July 2022 and, thus, presumably before he made any tuition payments. *See, e.g.*, 3 ER 61, 66, 68 (¶¶ 37, 64, 78). Likewise, the court correctly concluded that these allegations do not state an extortion claim because the 4AC is devoid of any allegations of “wrongful use of actual or threatened force, violence, or fear,” which are necessary to allege extortion. *See Rothman*, 912 F.2d at 317.

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Finally, Plaintiff alleges that Spiro and Gonzalez organized a fundraiser at PCL with the intent to use all proceeds for student needs but that those funds were instead allegedly diverted for other purposes. *See* 3 ER 64 (¶ 52). Once again, however, Plaintiff fails to allege that this isolated and sporadic act was part of a “pattern” of racketeering activity, or that it injured Plaintiff in his business or property as opposed to unnamed donors and students for whose “needs” the proceeds were to be allegedly used.

4. No Concrete Financial Harm Proximately Caused by the Alleged Predicate Acts

To have standing, “a civil RICO plaintiff must show: (1) that his alleged harm qualifies as injury to his business or property; and (2) that his harm was ‘by reason of’ the RICO violation, which requires the plaintiff to establish proximate causation.” *Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008). In the Ninth Circuit, a plaintiff asserting injury to property must allege “concrete financial loss.” *Id.* at 975. “Financial loss alone, however, is insufficient.” *Id.* “Without a harm to a specific business or property interest—a categorical inquiry typically determined by reference to state law—there is no injury to business or property within the meaning

of RICO.” *Id.* In addition, the plaintiff must show that the RICO violation proximately caused his injury, which requires “some direct relation between the injury asserted and the injurious conduct alleged.” *Id.* at 981.

Here, the court correctly concluded that Plaintiff failed to allege any concrete financial harm from the alleged RICO predicate acts. *See* 1 ER 28. As the court observed, “[t]he most plausible allegation Plaintiff makes is that under-crediting course hours would have made it difficult for students to transfer, because it would have appeared that they had less credit hours than they had in fact completed.” *Id.* As the court held, however, “a lost opportunity to transfer schools is hardly a concrete injury required to pursue a RICO claim.” *Id.*; *see also Chaset v. Fleeer/Skybox Int’l, LP*, 300 F.3d 1083, 1087 (9th Cir. 2002) (“Injury to mere expectancy interests or to an intangible property interest is not sufficient to confer RICO standing.”).

Here, Plaintiff has not alleged that he had attempted to transfer schools and was unable to do so as a result of his allegedly inaccurate transcript. Nor has Plaintiff articulated any plausible theory of concrete financial harm proximately caused by his inability to transfer schools.

On appeal, Plaintiff seems to suggest in passing that the court below erred because the concrete financial harm that he purportedly suffered was *not* the lost opportunity to transfer schools or an abstract “lost chance” at licensure but, instead, “specific out-of-pocket payments (tuition, fees, and related costs), duplicative examination and preparation expenses, and concrete delay-related losses tied to Defendants’ alleged mail and wire fraud, falsified transcripts, and concealment.” *See* AOB at 25. Plaintiff, however, does not explain *how* or *why* any of these concrete losses are proximately tied to any of the alleged RICO violations.

As the Court observed in *Chaset*, there is no proximately caused financial harm where the plaintiff fails to allege that he received something different than what he paid for. *See* 300 F.3d at 1087. Here, with regard to Plaintiff’s first three years of study at PCL, Plaintiff has not alleged that the classes that he paid for did not provide him with education that he bargained for or that the failure to provide the education during the first three years at PCL somehow amounted to a RICO violation. Instead, Plaintiff only takes issue with PCL’s alleged inability to provide him with fourth-year courses

required to graduate. *See* 3 ER 61 (¶ 37). As the court below correctly observed, these allegations do not plausibly state a fraud claim because the 4AC concedes that Plaintiff *was* informed about the PCL's inability to provide him with the fourth-year courses in July 2022 and, thus, presumably *before* he made any tuition payments. *See, e.g.*, 3 ER 61, 66, 68 (¶¶ 37, 64, 78).

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In sum, the Court should decline to resolve Plaintiff's RICO claim on the merits as it has been abandoned and waived. In any event, the district court correctly dismissed this claim with prejudice because Plaintiff has repeatedly failed to plausibly allege any actionable predicate act or any scheme to defraud that was carried out with specific intent to defraud. Nor has Plaintiff plausibly alleged that any of the predicate acts caused concrete financial harm to Plaintiff in his business or property. For all these reasons, the Court should affirm the dismissal of Plaintiff's RICO claim.

C. The Court Properly Declined to Exercise Supplemental Jurisdiction Over Plaintiff's State-Law Claims

Plaintiff challenges the district court's dismissal of his state-law claims, suggesting that it is unclear from the order as to whether the claims were

dismissed on the merits or under § 1367(c). AOB 41–42. Plaintiff seeks a limited remand to allow the district court to clarify with one sentence that the “state claims are dismissed pursuant to 28 U.S.C. § 1367(c).” *Id.*

Plaintiff’s arguments lack merit and no remand is necessary as it is clear—both from the court’s orders and the record—that Plaintiff’s state-law claims were dismissed without leave to amend but also without prejudice to being refiled in state court under 28 U.S.C. § 1367(c).

To begin with, the Magistrate Judge’s report and recommendation specifically recommends “dismissing the state law claims *without prejudice to Plaintiff bringing them in state court.*” See 1 ER 31 (citing *Wren v. Sletten Const. Co.*, 654 F.2d 529, 536 (9th Cir. 1981), and *Ismail v. Cnty. of Orange*, 917 F. Supp. 2d 1060, 1072 (C.D. Cal.)). *Wren*, cited by the Magistrate Judge, discussed pendent jurisdiction and held that “the proper exercise of discretion requires dismissal of the state claim” when all federal claims are dismissed before trial. See 654 F.2d at 536. *Ismail*, in turn, directly discussed 28 U.S.C. § 1367(c) and Ninth Circuit’s case law providing that “state-law claims *should* be dismissed if all the federal claims have been dismissed

short of trial.” *See* 917 F. Supp. at 1072. Thus, it is clear from the report and recommendation that the Magistrate Judge recommended the dismissal of Plaintiff’s state-law claims based on 28 U.S.C. § 1367(c).

Although the Magistrate Judge made the correct recommendation in the *body* of the report and recommendation, the “recommendation” part inadvertently recommended that the entire 4AC be dismissed “with prejudice.” *See* 1 ER 34. The district court, however, corrected this oversight by adopting the Magistrate Judge’s report and recommendation “with modification” —the modification being that Plaintiff’s state-law claims were being dismissed “without prejudice.” *See* 1 ER 12–13 (¶¶ 1, 9).

Finally, in response to Plaintiff’s Rule 59 motion (in which Plaintiff argued that the dismissal of his state-law claims deprived him of a forum for those claims), the district court once again clarified that the state-law claims were being dismissed *without prejudice* and that Plaintiff was *not* precluded “from refiling his state law claims in state court.” *See* 1 ER 8.

In sum, the record is clear that the court properly declined to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) over Plaintiff’s state-

law claims once it has dismissed all of Plaintiff's federal claims. *See also Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) ("In the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.").

Plaintiff's final argument is that the court erred in concluding that it did not have original jurisdiction over his state-law claims. Plaintiff concedes, as he must, that when he initially commenced this action, he was *domiciled in California* and, thus, diversity jurisdiction was lacking. *See* AOB at 42 ("Hill does not dispute that his initial complaints, filed while he was domiciled in California, did not establish diversity jurisdiction."); *see also* 2 PCL-SER 572 (Plaintiff's initial complaint alleging that "plaintiff is a law student and citizen residing in the State of California"). Instead, Plaintiff's argument is that diversity jurisdiction is not "frozen" and that he can create diversity jurisdiction where it was previously lacking by changing his domicile mid-litigation and filing an amended complaint.

Plaintiff's argument is contrary to Supreme Court precedent. It has been well-settled for more than two hundred years that the district court's diversity jurisdiction "depends upon the state of things at the time of the action brought." *See Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance*, 9 Wheat. 537, 539 (1824)). "This time-of-filing rule is hornbook law (quite literally) taught to first-year law students in any basic course on federal civil procedure. It measures all challenges to subject-matter jurisdiction premised upon diversity of citizenship against the state of facts that existed at the time of filing." *Id.* at 570–71.

Diversity jurisdiction under 28 U.S.C. § 1332(a) requires "complete diversity" —*i.e.*, "no plaintiff may be from the same state as any defendant." *Rosenwald*, 152 F.4th at 1174. Here, Plaintiff's initial complaint alleged that both Plaintiff and a number of Defendants were domiciled in California. *See, e.g.*, 2 PCL-SER 572 (Plaintiff); 2 PCL-SER 574 (PCL); 2 PCL-SER 575 (State Bar and Pena); 2 PCL-SER 579 (Hernandez); 2 PCL-SER 585 (Holton and Torres); 2 PCL-SER 586 (Spiro); 2 PCL-SER 587 (Wilson). As such, it is clear that complete diversity was lacking at the commencement of this action.

Relying on *Rosenwald*, Plaintiff argues that once he relocated to Texas during the pendency of this lawsuit, he could utilize 28 U.S.C. § 1653 and liberal policy favoring amendments to cure the defect in diversity jurisdiction. Not so. Section 1653 speaks solely of curing “[d]efective *allegations* of jurisdiction.” See 28 U.S.C. § 1653. As the Supreme Court explained, this “addresses only incorrect statements about jurisdiction that actually exists, and *not* defects in the jurisdictional facts themselves.” See *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 831 (1989). In other words, if Plaintiff *was actually domiciled in Texas* when this action was commenced (but erroneously pleaded in his complaint that he was a California resident), he could utilize § 1653 to correct the defective allegation in his complaint regarding his domicile. See *id.* He cannot, however, rely on § 1653 to create diversity jurisdiction “where diversity jurisdiction does not, in fact, exist” at the commencement of the action. See *id.*

In sum, there is absolutely no suggestion in the district court’s order or the Magistrate Judge’s report and recommendation that Plaintiff’s state-law claims were dismissed on the merits. Instead, the orders and the record

make clear that the state-law claims were dismissed under 28 U.S.C. § 1367(c) without prejudice to being refiled in state court. No remand is necessary.

D. The Court Properly Denied Further Leave to Amend

Plaintiff argues the district court abused its discretion in denying further leave to amend because it purportedly failed to provide specific findings as to futility and prejudice and failed to consider the new allegations in C5AC. The record, however, squarely refutes this argument. Nor does Plaintiff come close to establishing an abuse of discretion.

Under Rule 15(a), leave to amend should be liberally granted when justice so requires. *See* FED. R. CIV. P. 15(a)(2). “But a district court need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). In addition, leave to amend can be properly denied where there is “repeated failure to cure deficiencies by amendments previously allowed.” *Foman*, 371 U.S. at 182. Here, at least three of the *Foman* factors (repeated failure to cure

deficiencies, futility, and prejudice) support the district court’s decision to dismiss Plaintiff’s 4AC without further leave to amend.

1. Repeated Failure to Cure Deficiencies

The court’s discretion to deny leave to amend is “particularly broad” where the plaintiff has previously amended the complaint. *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013). Indeed, the fact that the plaintiff failed to take advantage of multiple prior opportunities to amend may be dispositive in denying further leave to amend, particularly where the court gives “specific instructions on how to amend the complaint” but the plaintiff does not comply. *See id.* (affirming the dismissal of the second amended complaint without leave to amend where plaintiffs “have had ample opportunity to properly plead a case and have failed to do so”).

Here, Plaintiff has had ample opportunity—at least *seven attempts*, to be exact—to craft a proper complaint. Specifically:

1. Plaintiff filed the initial 402-page complaint on February 20, 2023, followed by the filing of hundreds of additional pages of exhibits. *See* 6 ER 43–44 (Dkt. Nos. 1, 8–25).

2. After that complaint was dismissed under Rule 8, Plaintiff filed his FAC on April 18, 2023, and a motion to supplement the FAC on May 5, 2023. *See* 6 ER 45–46 (Dkt. Nos. 38, 40).

3. After the FAC was similarly dismissed under Rule 8, Plaintiff filed the SAC on September 20, 2023. *See* 6 ER 47 (Dkt. No. 55).

4. After the SAC was dismissed, Plaintiff filed his TAC on August 21, 2024. 1 PCL-SER 111–298.

5. On September 6, 2024, before any motions to dismiss could be filed, Plaintiff filed a motion to amend the TAC. 2 PCL-SER 304–308.

6. After the TAC was dismissed, and the court denied leave to file the amended TAC, Plaintiff filed a 4AC on March 31, 2025, and a corrected 4AC on April 1, 2025. *See* 6 ER 72 (Dkt. Nos. 255, 257).

7. While the motions to dismiss the 4AC were pending, Plaintiff filed a proposed 5AC on May 19, 2025. *See* 6 ER 82 (Dkt. No. 310). He then filed a proposed C5AC on May 22, 2025. *See* 2 ER 51–236 (Dkt. No. 313).

Plaintiff's first two complaints were dismissed under Rule 8, with the court providing Plaintiff with detailed instructions on how to cure the

deficiencies. Plaintiff's SAC, TAC, and 4AC were dismissed following the issuance of detailed reports and recommendations by the Magistrate Judge and a *de novo* review by the district court. In addition, Defendants' prior motions to dismiss have repeatedly identified specific deficiencies—both legal and factual—in Plaintiff's pleadings.

Despite those detailed motions and orders, Plaintiff has continued filing voluminous, confusing, and legally deficient complaints—each followed immediately by a motion to supplement or amend—that have repeatedly failed to cure prior defects and created new deficiencies.

In denying leave to amend, the court observed that it “has considered five versions of the Complaint and two proposed amended Complaints, amounting to hundreds of pages of allegations and dozens of exhibits. Despite this ample opportunity, Plaintiff has failed to allege facts amounting to a viable federal cause of action.” 1 ER 33. On these facts, the court did not abuse its discretion in denying further leave to amend. *See, e.g., Mir v. Fosburg*, 646 F.2d 342, 347 (9th Cir. 1980) (“a district court has broad discretion to grant or deny leave to amend, particularly where the court has

already given a plaintiff one or more opportunities to amend his complaint to allege federal claims”); *Allen v. City of Beverly Hills*, 911 F.2d 367, 373–74 (9th Cir. 1990) (refusing to allow plaintiff to file a fourth amended complaint where he “presented no new facts” and any further amendment would be futile); *Fidelity Fin. Corp. v. Fed. Home Loan Bank of San Francisco*, 792 F.2d 1432, 1438 (9th Cir. 1986) (refusing to allow plaintiff to file a fourth amended complaint where it “was simply restating its prior claims under new labels”).

As this Court observed in *Mir*: “At some point, a party may not respond to an adverse ruling by claiming that another theory not previously advanced provides a possible grounds for relief and should be considered.” *See* 646 F.2d at 347; *see also Salameh*, 726 F.3d at 1133 (“A plaintiff may not in substance say ‘trust me,’ and thereby gain a license for further amendment when prior opportunity to amend had been given.”). Here, Plaintiff’s answer to every motion to dismiss and dismissal order was to file yet another complaint that failed to cure prior defects and created new defects. The court did not abuse its discretion in denying further leave to amend.

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2. Any Further Amendment Would Have Been Futile

The court also correctly concluded that any further amendment—particularly, the proposed C5AC filed by Plaintiff—would be futile. 1 ER 32–33. In this regard, it is incorrect to say, as Plaintiff does, that the court failed to analyze the allegations in his proposed C5AC (Dkt. No. 313). The report and recommendation expressly notes that it was considering and analyzing the C5AC to determine whether it cures prior deficiencies. *See* 1 ER 32 (noting that the court has reviewed Plaintiff’s motions to amend at ECF 310 and 330 *and* “the proposed amended complaint” at ECF 313). Likewise, in denying Plaintiff’s Rule 59 motion, the district court noted that it reviewed Plaintiff’s motion to amend at Dkt. No. 330, which attaches a copy of Plaintiff’s proposed C5AC (which was previously separately filed at Dkt. No. 313). *See* 1 ER 7; *see also* 1 PCL-SER 2–11 (Dkt. No. 330).⁵

⁵ Plaintiff also suggests that the court previously failed to rule on his alternative TAC request. *See* AOB at 29–30, 33–34. Not so. Plaintiff appears to be referring to his motion to amend the TAC filed on September 6, 2024. *See* 6 ER 67 (Dkt. No. 163); *see also* 2 PCL-SER 304–308. But the Magistrate Judge’s TAC R&R expressly addressed and denied this motion to amend *with detailed analysis* as to why the proposed alternative TAC failed to cure the deficiencies identified by the court. *See* 1 ER 70–71.

The court also provided reasoned analysis as to why the C5AC fails to cure prior deficiencies and, thus, why further amendment would be futile:

The proposed Fifth Amended Complaint does not add any substantive factual allegations. Instead, the changes appear to be an attempt to clarify Plaintiff's allegations in response to arguments raised in Defendants' Motions to dismiss. For example, Plaintiff adds paragraphs 99A and 137A, which purport to outline the "particularities" of Defendants' fraud. *But the facts included in the paragraph are plead elsewhere in the Fourth and Fifth Amended Complaints.* Other additions include a clarification on the jurisdictional basis of Plaintiff's Complaint (ECF 317 ¶¶ 27A, 33A) and an allegation of satisfaction of the Government Claims Act (ECF 317 ¶ 72A). *None of these additions address the deficiencies in Plaintiff's RICO claim discussed [in the report and recommendation].*

1 ER 32–33.

The above squarely refutes Plaintiff's claim that the court failed to provide reasoned analysis as to why Plaintiff's proposed C5AC was futile. Indeed, the record in this case clearly demonstrates that Plaintiff's proposed amendments (as reflected in C5AC) did nothing to cure the deficiencies in Plaintiff's RICO claim identified by the court in the 4AC R&R.

Notably, at the court's request, Plaintiff prepared and lodged a red-lined version of the C5AC, comparing it to the dismissed 4AC. *See* 1 PCL-

SER 12–16, 17–106 (Dkt. Nos. 317, 318). A review of the red-lined C5AC (Dkt. No. 317) confirms that the only changes are to: (1) the “preface” section; (2) ¶ 3A (defining PCL Board of Directors); (3) ¶ 27A (jurisdiction); (4) ¶ 33A (standing); (5) ¶ 72A (Government Claims Act); (6) ¶¶ 99A and 137A (particularities of fraud under RICO); (7) reference to prior exhibit in ¶ 113; (8) ¶ 193A (State Bar employees’ alleged failure to act); (9) ¶ 220A (ongoing harm); and (10) edits to Plaintiff’s attached declaration. *See* 1 PCL-SER 22–23, 26–28, 36, 44–45, 48, 56, 75, 84, 88–93 (Dkt. No. 317).

As the court correctly observed (*see* 1 ER 32–33), the only substantive edits are the additions of Paragraphs 99A and 137A in the C5AC. *See* 1 PCL-SER 44–45, 56 (Dkt. No. 317). *But there are no new facts alleged in these two paragraphs*. Although both of these paragraphs purport to outline the “particularities” of Defendants’ alleged fraud, *all of these facts are already alleged elsewhere in the complaint*. As such, because the C5AC fails to add any additional factual content, the court correctly found that it does *not* cure the primary defect of Plaintiff’s RICO cause of action—failure to plausibly plead any predicate act under RICO or that any act was taken with *specific*

intent to fraud pursuant to a *scheme to defraud*.

Arguing the contrary, Plaintiff again mistakenly relies on *Rosenwald* and 28 U.S.C. § 1653. As discussed above, however, § 1653 only allows Plaintiff to cure defective “allegations” of jurisdiction; it does not permit him to create diversity jurisdiction where it was lacking at the commencement of the action. *See supra* Part V.C; *see also Newman-Green*, 490 U.S. at 831 (Section 1653 “addresses only incorrect statements about jurisdiction that actually exists, and *not* defects in the jurisdictional facts themselves”).

In sum, the record reflects that the court carefully reviewed Plaintiff’s proposed C5AC and correctly determined that it does not add any substantive changes to cure the fundamental defects in the RICO claim. On that basis, the court did not abuse its discretion in denying further leave to amend where any amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (“a district court may dismiss without leave where a plaintiff’s proposed amendments would fail to cure the pleading deficiencies and amendment would be futile”).

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3. Prejudice to Defendants

In addition to the above, the record also establishes that the PCL Defendants would be prejudiced by any further leave to amend. “Prejudice is the touchstone of the inquiry under rule 15(a).” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Here, the PCL Defendants have been forced to devote substantial time and resources to analyzing each new and confusing version of Plaintiff’s complaint and engaging in repeated motion practice. With each new iteration of the complaint, Defendants have been forced to review, decipher, and respond to lengthy, confusing pleadings, often followed by multiple requests for judicial notice or for leave to amend or supplement. The continuous litigation expenses incurred by Defendants to review, analyze, and formulate a response to each of Plaintiff’s complaints have been extensive and prejudicial.

4. No Denial of Due Process

Plaintiff’s final argument is that the district court’s purported failure to review *de novo* the Magistrate Judge’s report and recommendation and denial of leave to amend without analysis violated his due process rights by

(1) denying him a judicial forum, (2) depriving him of a meaningful review by a neutral judge, and (3) failing to afford him a real opportunity to be heard. *See* AOB at 48–52. These arguments are belied by the record.

As the above discussion demonstrates, Plaintiff had a judicial forum in which to raise his claims and at least *seven* opportunities to state a plausible federal claim. He failed. In addition, the record reflects that Plaintiff had more than an ample opportunity to be heard. Indeed, as the court observed, in denying further leave to amend: “Here, the Court has considered five versions of the Complaint and two proposed amended Complaints, amounting to hundreds of pages of allegations and dozens of exhibits. Despite this ample opportunity, Plaintiff has failed to allege facts amounting to a viable federal cause of action.” 1 ER 33.

There is also little merit to Plaintiff’s suggestion that he was denied meaningful review by an Article III judge. Under the Federal Magistrate Judge’s Act, “[a] judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). *De*

novo review, however, does not require an explicit analysis of each objection raised by the parties. See *United States v. Ramos*, 65 F.4th 427, 433–34 (9th Cir. 2023). It is generally sufficient for the district court to rely on the findings in the Magistrate Judge’s report and recommendation as long as it is clear that the court reviewed the record. See, e.g., *Holder v. Holder*, 392 F.3d 1009, 1022 (9th Cir. 2004) (“The district court expressly stated in its order that it adopted the magistrate judge’s recommendations only after having undertaken a *de novo* review of the record The district court’s approach fully complied with the statutory requirements in using the magistrate judge’s assistance in this case.”); *N. Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d 1447, 1450 (9th Cir. 1986) (holding that the district court’s review satisfied the *de novo* standard where the court noted that it had “reviewed the complaint, counter-complaints, all the records and files, ... and the ... Report and Recommendation of the United States Magistrate”).

Here, the district court expressly indicated that it conducted a *de novo* review of the Magistrate Judge’s SAC R&R, TAC R&R, and 4AC R&R and that in conducting each such review, it reviewed the operative complaint,

the applicable report and recommendation, and Plaintiff's objections thereto. *See* 2 PCL-SER 309 (Dkt. No. 145) (order accepting SAC R&R); 1 ER 40 (order accepting TAC R&R); 1 ER 11 (order accepting 4AC R&R); *see also* 1 ER 5 (order denying Plaintiff' Rule 59 motion). Nothing more is required.

VII. CONCLUSION

For all the foregoing reasons, the Court should affirm.

DATED: January 26, 2026

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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I certify that, on January 26, 2026, I caused the foregoing Peoples College of Law Appellees' Answering Brief to be electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate ACMS system. Participants in the case who are registered ACMS users will be served by the appellate ACMS system.

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Executed this 26th day of January 2026, at San Diego, California.

s/ Yury A. Kolesnikov

Yury A. Kolesnikov